



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

SMC
Docket No: 02722-98
22 April 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 25Mar98 w/attachments
(2) Pers-32 memo dtd 28May98
(3) BCNR ltr dtd 16Nov98 less enclosures
(4) Rep sr's ltr dtd 28Dec98 and
extract from BUPERSINST 1610.10, 2Aug95
(5) NPC-311 memo dtd 26Feb99
(6) Subject's ltr dtd 31Mar99
(7) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by changing his promotion recommendation on his enlisted performance evaluation report for 30 January to 15 November 1996 from "Promotable" to "Must Promote." A copy of this report is at Tab A.

2. The Board, consisting of Messrs. Rothlein and Morgan and Ms. Brown, initially reviewed Petitioner's allegations of error and injustice on 13 November 1998 and determined that additional information should be solicited from Petitioner's reporting senior. The Board completed deliberations on 21 April 1999. Pursuant to its regulations, the Board determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. The contested report evaluates Petitioner in his current rate of PN1 (pay grade E-6). Block 45 ("Promotion Recommendation - Individual") is marked "Promotable" (third

best). Block 46 ("Promotion Recommendation - Summary") shows Petitioner was one of 31 peers marked "Promotable," with 19 "Must Promote" (second best) and 13 "Early Promote" (best).

c. Petitioner believes the report is in error because the entry of "4.14" in block 40 ("Individual Trait Average"), which is above the reporting senior's average of "3.83" for the period, warrants at least a promotion recommendation of "Must Promote." He contends that whereas only 19 petty officers were marked "Must Promote," as many as 26 could have been so marked in a summary group of 63.

d. In the advisory opinion attached as enclosure (2), the Bureau of Naval Personnel (BUPERS) office having cognizance over the subject matter addressed in Petitioner's application recommended retention of the contested evaluation. The opinion stated that the advancement recommendation reflected in block 45 represents the reporting senior's appraisal of the member's readiness for the duties and responsibilities of the next higher pay grade. The opinion further stated that the recommendation is valid even though it may not be consistent with the average of the trait marks. Finally, BUPERS stated that use of the maximum numbers authorized in the promotion recommendation, block 45, is at the discretion of the reporting senior; and that distribution in a smaller percentage is not in violation of applicable directives.

e. At the Board's direction, the Board's staff sent the letter at enclosure (3) to the reporting senior, asking why he had rated Petitioner "Promotable," while apparently assigning more favorable promotion recommendation to peers with lower trait averages. The letter also asked that if the reporting senior determined a mistake had been made, he indicate whether he would support assigning Petitioner a more favorable promotion recommendation and, if so, what particular promotion recommendation.

f. The reporting senior's letter in response is at enclosure (4). In paragraph 2, he recommends assigning Petitioner a promotion recommendation of "Must Promote." He states "...it is clear that an error was made in assigning promotion recommendations for that E-6 evaluation period." He relates that during the process of preparing the E-6 evaluations, he assigned promotion recommendations on the basis of a combined quota for "Early Promote" and "Must Promote" recommendations of 50 percent, when the actual limit is 60 percent. He says that had he realized he could place additional personnel in the "Must Promote" category, he would have raised Petitioner's recommendation. In paragraph 4 of his letter, he states that after making promotion recommendations, he did not make adjustments to make trait averages more consistent with promotion recommendations; that had he made these revisions, he would have lowered Petitioner's mark in "Teamwork" (block 38) from "4.0" (second best) to "3.0" (third best); but that he does not recommend making such a change now. Finally, in paragraph 5 he states that "Although a supplemental report would normally be in order, two years have elapsed since the ending date of the report." and "Accordingly, I plan to take no further action."

g. Enclosure (4) also includes an extract from the applicable fitness report instruction, which shows that for all pay grades, the maximum for "Early Promote" is 20 percent of the summary group, rounded up; and that for pay grade E-6, the maximum total for "Early Promote" and "Must Promote" is 60 percent of the summary group, rounded up. In this case, the reporting senior used the maximum of 13 for "Early Promote." Therefore, the maximum for "Must Promote" was 25, the difference between 13 and 38 (60 percent of the 63-member summary group, rounded up).

h. Enclosure (5) is an advisory opinion from the Navy Personnel Command (NPC) in light of the reporting senior's letter. This opinion recommends retention of the contested report as written. NPC says the reporting senior's statement "appears to contradict itself," in that paragraph 2 recommends changing Petitioner's promotion recommendation, while paragraphs 4 and 5 do not. They conclude by stating that if the reporting senior decides to submit "supplementary material," they have no problem accepting it for inclusion in Petitioner's headquarters record.

i. At enclosure (6), Petitioner's reply to the NPC advisory opinion at enclosure (5), he states that he concurs with the reporting senior's recommendation of assigning a promotion recommendation of "Must Promote," but requests the report be left as written if a change would include lowering his mark in "Teamwork" to "3.0." Petitioner notes the reporting senior's concession that he made errors for the evaluation period in question. Petitioner states that in a requested interview with the reporting senior, Petitioner addressed the inconsistencies he perceived and the reporting senior's failure to use the maximum number of "Must Promote" recommendations; that the reporting senior did not mention lowering his mark in "Teamwork"; and that after their discussion, "...it was apparent that he felt it was too much trouble to change all the evaluations."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the recommendations at enclosures (3) and (5) to retain the contested report as written, the Board finds an injustice warranting the requested change of Petitioner's promotion recommendation, from "Promotable" to "Must Promote."

In this connection, the Board finds the reporting senior's letter persuasive and not at all self-contradictory. They note that the unfavorable advisory opinion at enclosure (5) does not assert that he contradicts himself, but states only that he "appears" to do so. As a further matter, the Board does not feel Petitioner should have to solicit "supplementary material" from the reporting senior. First, this would not fully correct his record, since the addition of supplementary material would leave the original uncorrected report for record reviewers to see. Further, and more importantly, the reporting senior has indicated he does not plan to submit a supplemental report. Therefore, requiring Petitioner to obtain such a report will leave him with no remedy at all for the error the reporting senior has admitted.

In view of the foregoing, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by making the following changes to his enlisted performance evaluation report for 30 January to 15 November 1996, dated 8 November 1996 and signed by Commander [REDACTED] CEC, USN:

(1) Block 45 ("Promotion Recommendation - Individual"): Delete "X" under "Promotable," and enter "X" under "Must Promote."

(2) Block 46 ("Promotion Recommendation - Summary"): Change from "31" to "30" under "Promotable," and from "19" to "20" under "Must Promote."


b. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

JUN 25 1999

Reviewed and approved:



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

2722-98

IN REPLY REFER TO
1610
Pers-32
28 MAY 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: BUPERS/BCNR Coordinator (Pers-00XCB)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual
(b) NAVOP 043/95, Interim EVAL Manual Change

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests change of his promotion recommendation to Must Promote.

2. Based on our review of the material provided, we find the following:

a. Review of the member's headquarters record revealed the report in question. The report is signed by the member in block 51 acknowledging the contents of the report and his right to submit a statement. The member indicated he did not desire to submit a statement; however, in accordance with reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired.

b. Reference (b), encourages the consistency of performance report marks, comments and recommendations. The advancement recommendation reflected in block 45 represents the reporting senior's appraisal of the member's readiness for the duties and responsibilities of the next higher paygrade. It is made at the discretion of the reporting senior and is not required to be consistent with other recommendations. The recommendation is valid even though it may not be consistent with the average of the trait marks.

c. The member alleges the report is in error because the reporting senior did not utilize the authorized quotas for Must Promote. In accordance with reference (a), Annex A, a maximum of 20% is authorized for the Early Promote category and 40% for Must Promote. Use of the maximum amount of quotas in the promotion recommendation, block 45, is at the discretion of the reporting senior. Distribution in a smaller percentage is not in violation of reference (a).

Subj: [REDACTED]

d. The report (marks, comments and recommendations) are the responsibility of the reporting senior. It is not required to be consistent with other reports or routinely open to challenge.

e. The member does not prove the report to be unjust or in error.

3. We recommend retention of the report as written.

[REDACTED]
Director, Military Personnel
Evaluation & Correspondence
Division



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2722-98

1610
NPC-311
26 FEB 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: [REDACTED]

Ref: (a) BCNR memo of 28 DEC 98
(b) Pers-32 ltr of 28 May 98
(c) CDR Marrs ltr of 28 Dec 98
(d) BUPERINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Per reference (a), reference (b) is amended to include the following:

a. Reference (c), the reporting senior's statement, appears to contradict itself, in that paragraph 2, recommends a change of the member's promotion recommendation, and paragraphs 4 and 5 do not recommend a change to the member's promotion recommendation.

b. In paragraph 2, the reporting senior states, "Upon further review of the available documents, it is clear that an error was made in assigning promotion recommendations for that E-6 evaluation period. I **recommend** assigning PN1 Burton a promotion recommendation of "Must Promote".

c. In paragraph 4, the reporting senior states, "Regretfully, after assigning promotion recommendations I did not make adjustments to the appropriate evaluations to make the trait averages more consistent with the promotion recommendations. Had I made these revisions I would have lowered PN1 Burton's mark in Teamwork to a "3.0". However, I **do not recommend** making such a change at this time."

d. In paragraph 5, the reporting senior states, "Although a supplemental report would normally be in order, two years have elapsed since the ending date of the report. Accordingly, I **plan to take no further action.**"

Subj: [REDACTED]

2. Per reference (d), Annex P, paragraph P-4.c, supplementary material may be submitted more than 2 years after the report ending date if the reporting senior demonstrates in a cover letter, to CHNAVPERS satisfaction, why the material could not have been submitted in a timely manner.

3. Based on reference (c), we recommend retention of the report as written. However, if the reporting senior decides to submit supplementary material per reference (d), Annex P, paragraph P-4, CHNAVPERS has no problem accepting the supplemental material for inclusion in the member's headquarters record.

[REDACTED]

Head, Performance
Evaluation Branch